

FACTUAL HISTORY

On July 20, 2003 appellant, then a 44-year-old correctional lieutenant, filed an occupational disease claim alleging that factors of her federal employment caused an emotional condition and elevated blood pressure.² On February 3, 2003 she had a verbal confrontation with Stephen Dewalt, the warden, alleging that, when she did not converse with him, he stood two inches from her shoulder and pointed at her face, angrily saying that he was tired of the way she treated him. Later that day, he inappropriately counseled and degraded appellant in the presence of Captain Michael Branch, her supervisor, and associate warden, Randy Eternick. She became very upset and saw her family physician on February 5, 2003 and was placed on sick leave. Appellant sought counseling from the employees' assistance program and was off work for approximately three weeks before being placed on family leave on May 6, 2003 due to serious health conditions. She alleged that Warden Dewalt was plotting to end her career which crushed her self-esteem and ability to handle her job effectively and caused her to fear for her life.

Appellant submitted reports from her attending Board-certified family physician, Dr. T. Andrew O'Donnell, who provided disability slips dated February 5, May 6 and July 24, 2003. In a report dated June 20, 2003, he reported that her blood pressure was first elevated on February 5, 2003 when she became stressed due to situational stressors at work. Dr. O'Donnell opined that, while appellant was predisposed to hypertension, the work situation exacerbated her condition. He noted that she had a difficult relationship with her supervisor. In a July 1, 2003 report, Dr. O'Donnell advised that appellant should be on extended sick leave due to depression, stress and hypertension, exacerbated by her work. On July 14, 2003 he advised that her hypertension could be a life-long condition, diagnosed situational stressors and depression and advised that appellant needed a less stressful job. In an August 7, 2003 letter to the employing establishment, Dr. O'Donnell diagnosed adjustment disorder with mixed anxiety and depression. He advised that appellant could physically perform her regular duties but the psychological stressors were too great and deferred treatment to her counselor, Lori Langham, a licensed social worker. On August 26, 2003 Dr. O'Donnell advised that she could return to work on September 9, 2003 but needed to be followed. Appellant submitted reports dated June 25 and August 7, 2003 from Ms. Langham.

In a staff incident report dated February 5, 2003, Captain Branch stated that he did not witness the confrontation between appellant and Warden Dewalt, but that she related it to him when he got to work. Later that day, he attended a meeting with appellant, Warden Dewalt and Mr. Eternick. Captain Branch related that, both appellant and the warden were upset, that warden Dewalt was concerned with her ability to communicate and that appellant stated that she would not be submissive. Captain Branch noted that a resolution was not obtained at the meeting.

The employing establishment submitted a July 21, 2003 statement from Captain Jacqueline M. Morin, who noted that she began her tour at the employing establishment on May 21, 2003 and included an analysis of appellant's leave from February 4 to July 7, 2003. In a

² It is unclear when appellant stopped work. The record provides several dates and further indicates that she initially went on a vacation to Europe. Appellant began to use sick leave on May 5, 2003.

July 31, 2003 statement, Valerie Hemenway, the captain's secretary, noted that appellant's first leave slips indicated that she was requesting leave for a scheduled trip to Germany and Paris. In an August 5, 2003 statement, Ms. Hemenway provided an explanation of leave taken by appellant from April 14 to May 5, 2003 when she began to use sick leave. Wade Nobles, safety manager, provided an August 8, 2003 statement in which he noted that appellant had knowledge of a pending disciplinary action which may have attributed to her stress. An employing establishment form indicated that appellant's request for a home business of recruiting medical personnel was approved on August 11, 2000.

In an August 21, 2003 statement, appellant noted that Captain Morin was not her supervisor and stated that she was not aware of any pending disciplinary action. Regarding her trip abroad, appellant stated that her husband was invited to judge a dog show, noting that her work problems originated weeks before the trip. Appellant described a home-based business of selling online learning courses and contended that union officials solicited staff members to write false statements about her solicitations for this business. She also submitted materials regarding an Equal Employment Opportunity (EEO) claim filed on June 9, 2003.

By letters dated September 24, 2003, the Office advised appellant of the evidence needed to support her claim and requested that the employing establishment respond to her allegations.

On October 17, 2003 appellant reiterated her contentions regarding the implicated employment factors. She submitted an October 3, 2003 report in which Dr. O'Donnell reiterated his prior diagnoses and stated, "it is fairly clear to me that the initial stress event of the work situation where you felt threatened in your work environment precipitated the increased stressors and the resultant situational depression. Appellant also submitted statements in which Theodore Robert Fuller, Phyllis McGilveary, Terry Lewis and Greg Kinard, coworkers, noted that she reported the February 3, 2003 confrontation to them and noted that appellant became upset but that they did not witness the incident. Mr. Fuller reported that appellant had other problems with Warden Dewalt.

In a January 28, 2004 report, Dr. Carol Martin, a psychiatrist, advised that it was medically contraindicated for appellant to participate in firing range activities. The record also contains a January 11, 2004 letter from appellant to the EEO Commission in which she alleged that a 12-day suspension she received in November 2003 was discriminatory.

By decision dated February 9, 2004, the Office denied the claim, finding that the February 3, 2003 incident did not constitute a compensable work factor. On March 5, 2004 appellant requested a hearing and submitted additional evidence, including schedules, policies, leave slips and duplicates of evidence previously of record. In a December 18, 2002 memorandum, she discussed the events of December 12, 2002, stating that on that day Warden Dewalt angrily confronted her about placing an inmate in lockup such that appellant felt threatened until Lieutenant Alan Thompson, the acting captain, intervened. In a January 18, 2003 memorandum, Lieutenant E.J. Smith informed Captain Branch that on January 17, 2003 Senior Officer Specialist Joseph Dunn came into the office wanting to discuss something with Lieutenant Smith. Appellant, a physician and another officer were also present. Officer Dunn demanded to know why he was being moved to the suicide watch post and continued to speak to

appellant and Lieutenant Smith in an unprofessional manner and would not leave the office when asked.

In a February 4, 2003 memorandum, appellant informed Mr. Eternick that she was emotionally and physically unable to return to work, noting that her stress began with Warden Dewalt in December 2002 and culminated in the February 2003 incident. In a memorandum dated February 4, 2003, Captain Branch noted that a counseling session was conducted on February 3, 2003 regarding the need for improvement of appellant's ability to communicate with staff and inmates. At the meeting, the warden reported that a number of complaints had been received against appellant. Captain Branch concluded, "Further discussion was generated to show how you, as a supervisor, should take a leadership role when interacting with your subordinates. It should be noted that you contribute significantly to the daily operation of the institution and have been entrusted with great responsibility. You were advised that you are held to high standards and it is imperative that you embrace the responsibilities empowered to you." In a statement dated February 3, 2003, appellant stated that, in the counseling session held later that day, Warden Dewalt became angry and advised her that she was borderline insubordinate.

On February 13, 2003 Warden Dewalt stated that, in mid December 2002, he was approached by senior officer specialist Edgerton, about a problem with an inmate that appellant had placed in lockup. He discussed this with her and made a suggestion but appellant disagreed with him, stating that she was in charge. Appellant continued to object until Lieutenant Thompson, who was present during the discussion, stated that he would see that Warden Dewalt's order was followed. Warden Dewalt stated that he discussed this incident with Mr. Eternick and asked that he discuss it with Captain Branch. He stated that he did not see appellant again until February 3, 2003 when he entered Lieutenant Thompson's common office and greeted her. When she kept her back to him and did not return his greeting, he stated that he told appellant, "you know lieutenant, I have done nothing but defend you for the entire three years that I have been here. The union has wanted a piece of you ever since I got here and I've defended you. I am getting a bit sick and tired of the way you talk to me and the way you act." Warden Dewalt stated that, at this point, he placed a logbook he was holding on the file cabinet, left the office and proceeded to Mr. Eternick's office. While there, Captain Branch called stating that appellant was complaining to him. He advised Mr. Eternick to call Captain Branch to bring appellant to the conference room where he advised her that he was concerned about the way she treated subordinates. Warden Dewalt noted that appellant attempted to interrupt him, her attitude and tone were condescending and he told her she was borderline insubordinate. He also stated that Captain Branch informed him of counseling her about the December 2002 incident and advised that he did not point a finger at her earlier that day. Warden Dewalt requested that Captain Branch document the counseling session.

Minutes from a threat assessment team meeting dated February 13, 2003, regarding the February 3, 2003 incident Lieutenant Thompson concluded that no threat of violence existed and that both appellant and Warden Dewalt made inappropriate comments "that are not conducive to the workplace." An office of internal affairs investigative report regarding the events of December 2002 and February 3, 2003 noted that there were no witnesses to the February 3, 2003 incident and that appellant and Warden Dewalt described it differently. Regarding the counseling session held later that day, both Mr. Eternick and Captain Branch agreed that appellant and Warden Dewalt raised their voices but, that the warden did not threaten her. The

report concluded that a charge of unprofessional conduct against Warden Dewalt was not sustained.

John McLaurin provided a statement regarding events of April 1, 2003, when he alleged that the head union steward, Troy Hopkins, questioned him about whether appellant asked him to join a business venture. An April 16, 2003 request to Warden Dewalt by Mr. Hopkins alleged that appellant was investigated for misconduct and harassment. He cited several complaints filed against her that occurred from August 2002 to April 15, 2003. In a May 7, 2003 report, Lieutenant Craig Moore advised Captain Branch about a December 16, 2002 incident in which Riley Lawson called appellant, who was not there, a bitch because she had not placed him on the overtime list. Lieutenant Moore stated that he told Mr. Lawson it was inappropriate to make statements like that about a supervisor. In a May 13, 2003 letter, Mr. Eternick requested that appellant furnish medical information and complete a leave request for family leave. In a May 21, 2003 memorandum, Lieutenant Smith provided Captain Morin with information regarding her absence and contacts made with her from April 20 to May 9, 2003. In a June 3, 2003 letter, Mr. Eternick informed her that, while Captain Branch had rated her "outstanding" on her yearly evaluation, he did not concur regarding Element 4, communication and had changed that element from Captain Branch's rating of "exceeds" to "fully successful" which changed her overall evaluation to "exceeds."

In a June 9, 2003 letter, addressed to the employing establishment's EEO office, appellant alleged that she was a victim of discrimination. She addressed the December 12, 2002 and February 3, 2003 confrontations with Warden Dewalt, the counseling session on February 3, 2003 and the investigation that followed; the union's solicitation of statements against her about her home-based business. Appellant alleged that Mr. Lawson called her a bitch; that the union inappropriately signed up for her online home-based business, that on January 3, 2003 Mr. Dunn made angry and hostile demands of her and that inappropriate grievances were filed against her.

The record also contains performance appraisals for the years 2001 and 2003, including that dated June 3, 2003 with Mr. Eternick's changes which appellant returned unsigned. In a July 1, 2003 letter, he informed her that, as her physician had advised that she could return to work on June 17, 2003, her sick leave was changed to annual leave. In a letter dated July 31, 2003, the EEO Commission stated that appellant's complaint had been accepted for investigation.

A number of affidavits dating from September 18 to October 15, 2003 regarding appellant's EEO complaint were submitted. She alleged discrimination based on race, sex and reprisal, that her performance appraisal was inappropriately changed by Mr. Eternick and that Warden Dewalt had discriminated against her. Appellant alleged that the meetings and the investigations were discriminatory and noted that she had reported the December 2002 incident to the Regional Director, Mr. Lappin. She also contended that the union targeted her and filed grievances against her. Appellant learned in May 2003, that in December 2002, Mr. Lawson had called her a bitch in the presence of others. She further stated that the union tried to persuade coworkers to testify that she made threats to them about her home business. Appellant reported that her blood pressure became elevated.

Mr. Eternick stated that appellant's 45-day suspension was not in retaliation for filing an EEO claim and that she was not treated differently from other officers. Warden Dewalt disagreed with her description of the events of December 12, 2002 and February 3, 2003 and opined that Mr. Eternick had given appellant a fair evaluation. Lieutenant Moore reiterated that Mr. Lawson had referred to appellant as a bitch in his presence. Mr. Hopkins, legal instruments examiner, stated that, as a union steward, he was told that appellant had approached numerous individuals to enroll in her home-based business and he spoke with Mr. McLaurin about this. He noted that grievances had been filed against her. Captain Morin advised that she never worked with appellant and called her at home to secure medical documentation about her return to work. She noted that appellant had a pending disciplinary action. Marc Phillips, case manager, noted that he witnessed Mr. Lawson calling appellant a bitch on December 16, 2002. Mr. Dunn reported that Captain Morin was his supervisor and discussed a grievance filed against appellant by the union. Johnny R. Gilliam stated that the union tried to get him to complain about appellant but he refused. He stated that he witnessed no mistreatment of her. Lieutenant Thompson noted that he was acting captain on December 12, 2002 and witnessed the incident between appellant and Warden Dewalt. He stated that Warden Dewalt was loud but not threatening whereas appellant was extremely loud, noting "she can be difficult at times." Lieutenant Thompson opined that she was not discriminated against or treated differently. Mr. McLaurin, food service supervisor, stated that appellant asked him to consider entering a business with her, which he did not think was appropriate. Lieutenant Thompson noted that he would not write a statement for the union regarding this and opined that appellant was not fairly treated by the union and Warden Dewalt. Brian Ross, supervisory special agent, noted that he investigated appellant's allegations regarding the December 2002 and February 2003 incidents and found that her allegations of abuse were not sustained. Mr. Lawson reported that he blurted out "that bitch" because appellant had not placed him on the overtime list and that Lieutenant Moore told him he should not speak about a lieutenant in that way. He stated that he was disciplined for inappropriate conduct, had not seen appellant since and noted that the union brought grievances against her.

Captain Branch stated that he was appellant's supervisor until his transfer to a penitentiary in Atlanta, Georgia, in April 2003. He noted that he was at another facility in December 2002 and reiterated that he did not witness the February 3, 2003 incident. Captain Branch stated that he discussed appellant's performance appraisal with Warden Dewalt and Mr. Eternick by telephone and that he had rated her more on her written skills and training of new employees. He noted discussing verbal communication with appellant on several occasions but stated that she was loyal and did a great job for him. Although she clashed with Warden Dewalt, the warden had not discriminated against her and she was his subordinate.

In an April 29, 2004 deposition, Mr. Eternick again noted his disagreement with Captain Branch's performance appraisal of appellant, which he changed, noting that he observed her on many occasions. He felt that Warden Dewalt's comments to appellant in December 2002 were inappropriate because Lieutenant Thompson was present, but that he and Captain Branch had counseled her on several occasions regarding her verbal skills.

An undated EEO investigation report describing the affidavits was submitted. In a decision dated July 6, 2004, the EEO Commission found that appellant had not proved that she

was discriminated against at the employing establishment or subjected to a hostile work environment on the bases of race or sex or in reprisal for prior EEO activities.

Appellant also submitted additional medical evidence from Dr. O'Donnell dated February 12 to August 14, 2003.

At the hearing held on October 28, 2004, Dr. Martin, a Board-eligible psychiatrist, stated that she first saw appellant on October 9, 2003 when she described the December 2002 and February 2003 confrontations. She generally opined that appellant's condition was caused by various situations where she was not able to maintain her dignity. Dr. Martin provided a diagnosis of adjustment disorder and depressed mood, noted that appellant's accommodated job had not been successful and that she last worked on August 19, 2004 when she was terminated. She opined that appellant could not work at all. Appellant's lawyer stated that she stopped work because the accommodation ended and, because of her physician's restrictions, she could no longer work in law enforcement.

Appellant stated that, regarding the December 2002 incident, Warden Dewalt lunged at her and she felt he was undermining her command. Regarding the February 2003 incident, she stated that he brushed her side, pointed a finger in her face, threw a binder on the shelf and slammed the door. After the February 2003 incident, appellant's supervisors started soliciting people to write her up and that she thereafter had no interaction with Warden Dewalt. Upon returning to work, she was reassigned to the medical center with administrative and light duties based on her doctor's restrictions and then moved to employee development. Appellant opined that her performance appraisal was lowered by Mr. Eternick because Warden Dewalt made him and it was done in retaliation for filing her EEO complaint. She testified that she was suspended for an incident that occurred 17 months previously when she was 15 minutes late for an airport pick up of prisoners. Appellant noted that her EEO case and two grievances were pending. She alleged that the December 2001 and February 2003 incidents were "solely the cause" of her condition.

By decision dated February 22, 2005, the hearing representative affirmed the February 9, 2004 decision as modified, finding two compensable factors of employment, that on December 16, 2002 the union president called appellant a bitch and that on January 17, 2003 Mr. Dunn demanded to know why his assignment was changed and would not leave the office after being directed to by Lieutenant Smith. The hearing representative noted that this was confirmed by the January 18, 2003 statement from him. The hearing representative found, however, that the medical evidence did not show that appellant's condition was caused by these incidents.

LEGAL PRECEDENT

To establish a claim for an emotional condition sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical

opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from a emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.⁹ An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.¹⁰

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant, under the Act, has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹¹

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Lillian Cutler*, *supra* note 4.

⁸ *Kim Nguyen*, 53 ECAB 127 (2001).

⁹ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁰ *James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Id.*

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁴

ANALYSIS

The Board notes that, even though appellant testified at the hearing, she was only contending that the December 2002 and February 2003 incidents caused her condition, she established as compensable that Mr. Dunn was argumentative and would not leave the lieutenants' office. The Board, however, does not agree that the fact that Mr. Lawson called appellant a bitch in the presence of others in December 2002, is a compensable factor. The Board has recognized the compensability of verbal abuse in certain circumstances. This, however, does not imply that every statement uttered in the workplace will give rise to compensability.¹⁵ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁶ In this instance, appellant was not present when Mr. Lawson made the statement and she stated that she did not hear about the inappropriate comment until May 2003, five months after the utterance.¹⁷

The Board finds that the December 2002 and February 2003 confrontations with Warden Dewalt do not constitute compensable factors of employment. Lieutenant Thompson witnessed the December 2002 event and he stated that, while the warden was loud, he was not threatening, whereas appellant was extremely loud. The February 3, 2003 incident was not witnessed and while Mr. Eternick, Captain Branch and the threat assessment team agreed that both appellant and Warden Dewalt raised their voices in the counseling session that followed, they agreed that the warden did not ever threaten appellant. The mere fact that a supervisor or employee may raise his or her voice during the course of a conversation does not warrant a finding of verbal

¹² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *Leslie C. Moore*, *supra* note 3; *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁵ *Denise Y. McCollum*, 53 ECAB 647 (2002).

¹⁶ *Penelope C. Owens*, 54 ECAB ____ (Docket No. 03-1078, issued July 7, 2003).

¹⁷ *See generally Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004).

abuse.¹⁸ Moreover, the Internal Affairs investigation that followed concluded that a charge of unprofessional conduct against Warden Dewalt was not established.

An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act. This principle recognizes that a supervisor or manager, in general, must be allowed to perform their duties and that employees will at times dislike the actions taken.¹⁹ Furthermore, mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.²⁰ The Board thus, finds that, while the record establishes that appellant and Warden Dewalt had a difficult working relationship, there is no evidence of record to establish that the events of December 12, 2002 or February 3, 2003 were compensable factors of employment under the Act.

Regarding the fact that Mr. Eternick, as her second-line supervisor, lowered her June 3, 2003 performance appraisal for the element "communication," these matters generally fall outside the scope of coverage under the Act.²¹ In this case, there is nothing of record to indicate that the employing establishment erred in this matter. Mr. Eternick provided ample an explanation regarding why he determined that appellant's oral communication skills fell in the "fully successful" category. The record contains a counseling memorandum from Captain Branch regarding appellant's communication skills and both Captain Branch and Mr. Eternick noted that they had discussed this with her. While appellant alleges that Warden Dewalt unduly influenced Mr. Eternick in this regard, she provided no substantiation and the Board finds no evidence of error or abuse in appellant's performance appraisal.²²

To the degree that appellant is alleging that it was inappropriate for the employing establishment to contact her while she was on leave, the record demonstrates that the employing establishment was merely trying to obtain the necessary medical documentation to support her continued absence. Therefore, there was no error or abuse in this administrative matter.²³ The record also does not establish that the employing establishment erred in conducting investigations regarding the February 3, 2003 incident or in issuing appellant a suspension, as she submitted no evidence to demonstrate that the employing establishment acted unreasonably.²⁴

¹⁸ *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005).

¹⁹ *Judy L. Kahn*, 53 ECAB 321 (2002).

²⁰ *Id.*

²¹ *See Felix Flecha*, *supra* note 9.

²² *Id.*

²³ *Judy L. Kahn*, *supra* note 19.

²⁴ *Andrew J. Sheppard*, 53 ECAB 170 (2001). Moreover, the November 2003 suspension was issued after appellant filed the instant claim.

Appellant also stated that a grievance and an EEO complaint had been filed and voluminous records were submitted regarding the latter. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.²⁵ In this case, the record does not contain a final decision regarding any grievance. The EEO Commission decision dated July 6, 2004 was not favorable to appellant. She, therefore, failed to establish a compensable factor of employment regarding these matters.

Appellant also generally contended that she was harassed by Warden Dewalt. With regard to emotional claims arising under the Act, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEO, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under the Act, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coworkers. Mere perceptions of harassment or discrimination are not compensable under the Act²⁶ and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.²⁷

The record in this case contains a number of statements and affidavits. While Mr. Fuller, Ms. McGilveary, Ms. Lewis and Mr. Kinard noted that appellant became upset on February 3, 2003. Mr. Fuller reported that she had problems with Warden Dewalt. These statements, however, do not establish that appellant was harassed, as alleged. Mr. McLaurin opined that appellant was treated unfairly by the warden; however, he provided no specific examples. Mr. Eternick and Captain Branch advised that appellant and the warden had a difficult relationship, but also advised that she was not discriminated against. The Board finds that the evidence is insufficient to establish harassment. As appellant did not establish as factual a basis for her perceptions of discrimination or harassment by the employing establishment, she did not establish that harassment and/or discrimination occurred.²⁸ The evidence instead suggests that the employee’s feelings were self-generated and, thus, not compensable under the Act.²⁹

Appellant established one compensable factor of employment, that she was angrily confronted by Mr. Dunn on January 17, 2003. The medical evidence must, therefore, be analyzed.³⁰ The medical evidence includes reports from appellant’s attending family physician,

²⁵ *Michael L. Deas*, 53 ECAB 208 (2001).

²⁶ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

²⁷ *James E. Norris*, *supra* note 10.

²⁸ *Id.*.

²⁹ *See Gregorio E. Conde*, 52 ECAB 410 (2001).

³⁰ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

Dr. O'Donnell, who advised that her depression, stress and hypertension were exacerbated by stressors at work and noted a difficult relationship with her supervisor.³¹ Dr. Martin, a psychiatrist, diagnosed adjustment disorder and depressed mood and testified at the hearing regarding the December 2002 and February 2003 incidents with Warden Dewalt, opining that these and other situations caused appellant's stress because she could not maintain her dignity. Neither physician specifically mentioned the January 17, 2003 compensable factor of employment. Instead they generally indicated that appellant's condition was caused by her relationship with Warden Dewalt, which has not been found to be a compensable factor. The Board finds the medical evidence of record insufficient to establish her claim.³²

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2005 be affirmed as modified.

Issued: January 3, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

³¹ The Board notes that the reports of a social worker such as Ms. Langham do not constitute competent medical evidence, as a social worker is not a "physician" as defined by 5 U.S.C. § 8101(2). *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

³² *Leslie C. Moore*, *supra* note 3.